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In re Application of
SMALLEY et al.
Application No.: 10/575,352
PCT No.: PCT/US04/34002
Int. Filing Date: 14 October 2004
Priority Date: 14 October 2003
Attorney Docket No.: 11321P077WOUS
For: AMPLIFICATION OF CARBON
NANOTUBES VIA SEEDED-GROWTH
METHODS

DECISION ON
PAPERS UNDER 37 CFR 1.42

This decision is issued in response to applicants' "Renewed Submission under 37 CFR 1.42" filed 13 August 2007. No petition fee is required.

BACKGROUND

On 14 October 2004, applicants filed the above-identified international application which claimed a priority date of 14 October 2003. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee was to expire 30 months from the priority date, 14 April 2006.

On 11 April 2006, applicants filed a transmittal letter for entry into the national stage in the United States accompanied, inter alia, by: the basic national fee; a copy of the international application; and a preliminary amendment.

On 19 April 2007, applicants filed a declaration executed by twelve of the thirteen inventors and Irene M. Marek, on behalf of deceased inventor, Richard E. Smalley. In a decision dated 11 June 2007, applicants' request under 37 CFR 1.42 was refused.

On 13 August 2007, applicants filed a "Renewed Submission under 37 CFR 1.42."

DISCUSSION

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

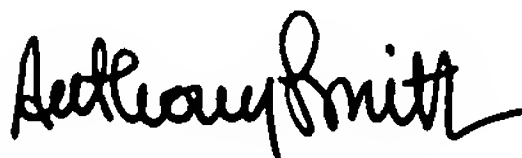
The declaration filed 13 August 2007 is executed by twelve of the thirteen inventors and Irene M. Marek as the "legal representative" of the deceased inventor, Richard E. Smalley. The declaration submitted on 13 August 2007 appears to have been executed by the proper party under 37 CFR 1.42, however, the declaration is not in an acceptable form. Specifically, there is an issue as to whether the declaration has been properly executed. The declaration filed with the petition includes duplicate sheets of pages four (4), five (5), and six (6). It is unclear if the inventors were presented with only pages four (4), five (5), and six (6), in which case the execution would be improper, or if they were presented with a complete declaration for signing, but counsel subsequently compiled the declaration into the single document, which is improper. (See MPEP 201.03(B) on how to correct this matter.)

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is **REFUSED**.

Applicants are required to provide an oath/declaration in compliance with 37 CFR 1.497(a)-(b) within **TWO (2) MONTHS** from the mail date of this Decision. Failure to respond will result in the abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42" and must include an acceptable declaration under 37 CFR 1.497 which has been executed by the either the legal representative of the deceased inventor or, if no legal representative has been appointed, all of the heirs of the deceased inventor.

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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